

United States
Circuit Court of Appeals

For the Ninth Circuit.

CANADIAN PACIFIC RAILWAY COMPANY,
a Corporation,

Plaintiff in Error,

vs.

JOHN WIELAND, Doing Business Under the
Firm Name and Style of WIELAND BROS.,
Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District Court
of the Northern District of California,
Second Division.

Filed

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F. D. Monckton,
Clerk.



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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*In the Circuit Court of the United States, in and
for the Ninth Circuit, and Northern District of
California.*

JOHN WIELAND, Doing Business Under the Firm
Name and Style of "WIELAND BROS.,"
Plaintiff,

vs.

CANADIAN PACIFIC RAILWAY COMPANY
(a Corporation),
Defendant.

Complaint.

Plaintiff in the above-entitled action complains of
the defendant herein as follows:

I.

That at all the times in this complaint mentioned
the plaintiff was and now is a citizen and resident
of the United States and of the State of California,
and doing business under the firm name and style of
"Wieland Bros.," importers and wholesale provision
dealers, in the City and County of San Francisco,
in said Northern District of California.

II.

That at all the times hereinafter mentioned the
defendant was and now is a corporation duly or-
ganized under the laws of a foreign country, to wit,
the Dominion of Canada, and having its principal
place of business in said Canada, and having a place
of business in said City and County of San Fran-
cisco, and that defendant was and now is a common
carrier of goods for hire.

III.

That at and before the times hereinafter mentioned defendant had established an agency at the City of Antwerp, in the Kingdom of Belgium, and also an agency in the City and County of San Francisco aforementioned. That, before the times hereinafter mentioned, plaintiff had entered into and made an agreement [1*] with defendant, through the recognized agent of said defendant in San Francisco, by the terms of which agreement said defendant agreed to receive and ship, at the said City of Antwerp, all the goods offered to defendant for carriage by said plaintiff or on behalf of said plaintiff by European consignors, at a rate of freight agreed upon, and to safely carry the same from the said City of Antwerp in the Kingdom of Belgium, to the said City of San Francisco in the State of California, and to there deliver the same to the plaintiff.

IV.

Plaintiff is informed and believes, and on such information and belief alleges the facts to be that thereafter and during the life of said agreement, and within the terms thereof, and on or about the 20th day of May, A. D. 1901, at the said City of Antwerp, defendant carrier, by its authorized agent in said city, notified and requested certain consignors acting on behalf of said plaintiff, to wit: the firm of Oswald Roth, of Uster, Switzerland, to deliver or cause to be delivered to defendant or its said authorized agent in Antwerp, on or about the 3d day of June, A. D. 1901, certain merchandise of great value previously

*Page-number appearing at foot of page of original certified Record.

ordered by plaintiff from said consignors and belonging and to be consigned to said plaintiff, to wit: thirty-five (35) tubs of cheese of the value of seventeen thousand francs, more or less, at the place of consignment, to be by said defendant as carrier taken care of, and to be by defendants shipped on board the SS. "Sardinian Prince" which was to sail on the 5th day of June, A. D. 1901, and to be by defendants safely and securely carried and conveyed from said City of Antwerp to said City of San Francisco, to be there delivered to plaintiff, for said certain rate or reward paid or to be paid therefor to defendant as previously agreed for the care, carriage, conveyance and final delivery thereof. [2] That, in consideration of such delivery in accordance with defendant's request, defendant carrier undertook, and to the said plaintiff and the said Roth, acting on behalf of plaintiff, then and there faithfully promised and agreed as such carrier to take care of and to ship on board the SS. "Sardinian Prince" which was to sail on the 5th day of June, A. D. 1901, and to safely and securely keep, carry and convey the said goods from the said City of Antwerp to said City of San Francisco, and to there safely deliver the same to this plaintiff. That said plaintiff, by his said consignors, relying on said promise and undertaking of defendant, thereafter, to wit: on or about the 3d day of June, A. D. 1901, at the said City of Antwerp, did deliver or cause to be delivered to the said defendant or its duly authorized agent, the said goods, to be by defendant safely and securely taken care of, kept, carried, conveyed and delivered as aforesaid, and that defendant, by its said agent, then and there re-

ceived and accepted the said goods for the purpose
aforementioned and for immediate shipment.

V.

That the said defendant, not regarding its said promise and undertaking, but in violation thereof, has not safely and securely as carrier taken care of, kept, carried, conveyed or delivered the said goods or any part thereof, but on the contrary, has wholly neglected and omitted so to do, and by and through said default of said defendant the said goods and every part thereof, became and were, wholly lost to said plaintiff, to his damage in the sum of six thousand two hundred dollars (\$6,200). Yet the said defendant, though often requested, has never paid said sum, nor any part thereof, but has refused and yet refuses so to do. [3]

WHEREFORE, plaintiff demands judgment against defendant for the sum of six thousand two hundred dollars (\$6,200) with legal interest thereon from the time when said goods should have been delivered to said plaintiff, and for costs of suit.

LOUIS T. HENGSTLER,

Attorney for Plaintiff.

MILTON ANDROS,

Of Counsel. [4]

State of California,

City and County of San Francisco,—ss.

Christian Schulz, being duly sworn, deposes and says: That at all the times in said complaint mentioned he was and still is the manager of the firm of "Wieland Bros." and agent of the plaintiff doing business under the firm name of "Wieland Bros."

That he has read the foregoing complaint and knows the contents thereof; that the same is true of his own knowledge except as to the matters therein stated on information and belief, and, as to those matters, that he believes it to be true. That he resides in the City and County of San Francisco, and makes this affidavit on behalf of said plaintiff for the reason that said plaintiff is absent from the said City and County of San Francisco and the State of California.

CHRISTIAN SCHÜLZ.

Subscribed and sworn to before me this ninth day of June, 1902.

[Seal]

HARRY J. LASK,

Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: Filed June 9, 1902. Southard Hoffman, Clerk. By W. B. Beazley, Deputy Clerk.
[5]

In the Circuit Court of the United States, in and for the Ninth Circuit, and Northern District of California.

JOHN WIELAND, Doing Business Under the Firm Name and Style of "WIELAND BROS.,"
Plaintiff,

vs.

CANADIAN PACIFIC RAILWAY COMPANY
(a Corporation),

Defendant.

Answer of Defendant.

Now comes said defendant, and answers the com-

plaint filed by plaintiff in the above-entitled action as follows:

Defendant admits that at and before the times mentioned in said complaint, it had established an agency for certain purposes at the City of Antwerp, in the Kingdom of Belgium.

And defendant avers that it is informed, verily believes and accordingly upon its information and belief, alleges that at all times aforesaid, plaintiff was fully cognizant of the purposes of the said agency of defendant at said City of Antwerp, and of the scope and limit of the authority of the agent in charge of said agency.

And defendant admits that at the times aforesaid, it had established a district freight and passenger agency in the City and County of San Francisco, State of California.

Defendant denies that before the times aforesaid, entered into or made any agreement with defendant through the recognized agent of defendant in San Francisco, or otherwise, by the terms of which said agreement, said defendant agreed to receive or ship at the said City of Antwerp, goods offered to defendant for carriage by said plaintiff or on behalf of said plaintiff by European consignors at a rate of freight agreed upon or to safely carry the same from said City of Antwerp, in the Kingdom of [6] Belgium to the said City of San Francisco, in the State of California, or to there deliver the same to the plaintiff, or any other agreement whatsoever, or any transactions except as hereinafter specified.

Defendant avers that heretofore from time to time it made various offers to plaintiff, to the effect that

it would receive shipments of freight for plaintiff at Antwerp, Belgium, and would cause the same to be carried and delivered to plaintiff at San Francisco, at different special rates of freight fixed and quoted to plaintiff at such times and occasions, but that each and every one of said offers was made to and received by plaintiff in every instance subject to certain express conditions, provisions, exemptions and stipulations, one of which was to the effect that no such shipment of freight should, could or would be delivered to or received for transportation as aforesaid, except only if and when the same was placed upon landing places in the said City of Antwerp alongside of ships to be designated by defendant, which ships were then and there ready to take such shipments of freight on board and not otherwise, and another of which was to the effect that defendant should not be liable for any damage to or destruction of such shipments of freight caused by fire at sea or on shore at any time or in any place, it being the fact well known, understood and agreed upon by the parties to this action at all the times aforesaid, that defendant had no control over the management or movements of such ships, but that the same belonged to and were under the control of other persons.

Defendant denies that during the life of any agreement, or within any term thereof, or on or about the 20th [7] day of May, 1901, at the said City of Antwerp, or at any other time or place, defendant by its authorized agent in said City or otherwise, notified or requested certain consignors acting on behalf of said plaintiff, to wit: the firm of Oswald Roth of

Uster, Switzerland, or any other person or persons, to deliver or cause to be delivered to defendant or its said authorized agent in Antwerp on or about the 3d day of June, 1901, certain merchandise, to wit: the 35 tubs of cheese specified and described in plaintiff's complaint or any part of said merchandise belonging to or to be consigned to said plaintiff to be by defendant as carrier or otherwise, taken care of or shipped or carried or delivered in any manner or way whatsoever, or gave to said or any such consignors any other notice with reference to such merchandise except only as hereinafter stated and not otherwise.

Defendant avers that during the month of May, 1901, it caused the firm of Oswald Roth of Uster, Switzerland, to be notified and informed that a ship then designated by defendant, named "Sardinian Prince" would probably be at its accustomed landing place in the said City of Antwerp ready there to receive goods according to the terms and provisions of the offers aforesaid, in time to sail thereafter on or about June 5th, 1901, and that such notice and information was given to said firm of Oswald Roth, said consignor of plaintiff only in order that said firm might know when to tender shipments of freight for plaintiff on the landing place in the said City of Antwerp, alongside of said ship "Sardinian Prince" if it desired the same to be shipped as aforesaid upon said vessel in time for departure on June 5th, 1901.

And defendant denies that in consideration of any matter or thing, in accordance with defendant's request, or otherwise, or at all, defendant undertook,

or to the said plaintiff or the said Oswald Roth, acting on behalf of plaintiff, or otherwise, or [8] to any person or persons at any time or place, ever or at all, promised or agreed as such carrier or otherwise, to take care of or to ship on board the SS. "Sardinian Prince," which was to sail on the 5th day of June, 1901, or to safely or securely, or otherwise, keep, carry or convey the goods specified and described in plaintiff's complaint, or any thereof, from the said City of Antwerp to the said City of San Francisco, or from or to or between any other termini, or at all, or to safely or otherwise deliver the same or any thereof, to plaintiff.

And defendant denies that plaintiff by his said consignor, or otherwise, relying on any promise or undertaking of defendant, or otherwise, on or about the 3d day of June, 1901, at the said City of Antwerp, or at any other time or place, ever or at all, did deliver or cause to be delivered to defendant or its duly authorized agent the goods, to wit: the 35 tubs of cheese specified and described in plaintiff's complaint or any thereof, the said goods or any thereof to be by defendant safely or securely or otherwise taken care of, kept, carried, conveyed or delivered in any manner or way, or at all.

And defendant denies that it then and there, or otherwise, at any time or place, ever received or accepted the said goods or any thereof for any of the purposes aforementioned, or for immediate shipment or for any other purpose or at all.

And defendant denies that not regarding its promise or undertaking or in violation thereof, it has not safely or securely as carrier taken care of, kept,

by jury being hereby expressly waived), upon the statement of facts hereunto attached and argument of counsel; that such Statement of Facts presents all the matter upon which the decision shall be made; that neither party shall introduce any evidence contradictory to any of the facts specified in said statement of facts, and that neither party shall introduce any evidence in addition to said statement of facts unless said court shall desire a showing made as to some further matter.

San Francisco, the 4th day of February, 1914.

ANDROS & HENGSTLER,

LOUIS T. HENGSTLER,

Attorneys for Plaintiff.

LINDLEY & EICKHOFF,

Attorneys for Defendant. [11]

*In the District Court of the United States, in and for
the Northern District of California, Second
Division.*

No. 13,240.

JOHN WIELAND, etc.,

Plaintiff,

vs.

CANADIAN PACIFIC RAILWAY COMPANY,
Defendant.

Statement of Facts.

Plaintiff, at the time when the Complaint in this action was filed, and at all times in said complaint mentioned, was, and now is, a citizen and resident of the United States and of the State of California, and

doing business in San Francisco, in said Northern District of California, as importer, under the firm name of "Wieland Bros." Defendant, at all of said times, was, and now is, a foreign corporation, to wit: a corporation of the Dominion of Canada, having a place of business in said San Francisco, and was, and is, a common carrier of goods for hire. At all of the times herein specified defendant maintained an agency in the City of Antwerp, in the Kingdom of Belgium, in sole charge of one Herbert H. Debenham, who, for seven years next preceding the events hereinafter mentioned, had, been, and then was, the European Continental Traffic Agent of the Canadian Pacific Railway Company. It was the duty of said W. H. Debenham, as such Continental Traffic Agent of the Canadian Pacific Railway Company, to receive at Antwerp, Belgium, to the extent that such shipments could be received by anyone at Antwerp, pursuant and subject to the provisions of the International Treaty hereinafter specified, and the laws of the Kingdom of Belgium, shipments of merchandise (like the one in controversy in this action) [12] coming there in Bond for export, pursuant and subject to said Treaty, intended to be transported by said defendant carrier, and to give such directions to the Government authorities at Antwerp, Belgium, as were necessary to have such shipments of merchandise placed on board of steamers leaving Antwerp and connecting with defendant's railroad at Montreal, Canada; but it was his duty to receive and forward such shipments of merchandise as aforesaid only to the extent and in the sense and in the manner

according to which shipments of merchandise coming into the Kingdom of Belgium in bond for export, pursuant and subject to the terms of the International Treaty hereinafer referred to, might be received by any one at Antwerp, to be thence forwarded under and pursuant and subject to the provisions of said Treaty. The defendant, Canadian Pacific Railway Company, did not own the steamers upon which the shipments specified as aforesaid were embarked, but arranged with the owners of steamers for such space as was required from time to time to carry, to Montreal, such shipments as were ultimately intended to be carried towards their destination by defendant's railroad. Such arrangements for ocean carriage of the shipments were contemplated by plaintiff and defendant in their dealings involved in this action. Plaintiff made arrangements from time to time with defendant, at the City of San Francisco, by the terms of which, pursuant and subject to the terms of the International Treaty aforesaid, and of the laws of the Kingdom of Belgium, and not otherwise, said Debenham, on behalf of defendant, was to receive and cause to be embarked at Antwerp, pursuant to the arrangements aforesaid, all the shipments of merchandise consigned to defendant for carriage from Antwerp to San Francisco, for an agreed rate of freight; and many shipments had been made under such arrangements prior to the shipment here in suit. The only term of the regular arrangements [13] which was changed in the course of these numerous shipments was that the rate of freight charged by defendant at different times varied. In

the regular course of business, and pursuant to the terms of the arrangements aforesaid, shipments had been from time to time received by said Debenham for plaintiff, as hereinabove set forth, forwarded to San Francisco, and delivered to plaintiff during five years preceding the shipment here in question.

On May 11, 1901, Oswald Roth, of Uster, Switzerland, shippers of the goods mentioned in the complaint, intending to send the same, via Antwerp, to plaintiff, at San Francisco, by way of defendant's road, from Montreal wrote to Debenham, as follows:

"Messrs. Wieland Bros. at San Francisco have advised me that, in future, I must send my consignments by the last boat leaving Antwerp each month. Please let me know at once when the last sailing will take place this month." (Exhibit 17.)

On May 13, 1901, Debenham answered as follows:

"Referring to yours of the 11th inst. I request you to send me the lot of cheese for account of Wieland Bros. of San Francisco to 'Antwerp Bassins Transit' Station, so that it will arrive on the 22nd inst." (Exhibit 18.)

On May 14, 1901, Oswald Roth answered:

"Yours of the 13th inst. just received, but I cannot get the shipment of 35 tubs ready to-morrow, and as Thursday is a holiday, I cannot send it in time for the sailing on the 22nd. Kindly let me know the date of sailing of the very next steamer following.

. . .

I counted on a sailing on about May 25 or 30." [14] (Exhibit 19.)

On May 17, 1901, Debenham replied:

“Yours of the 14th inst. received and contents noted. Please prepare the cheese so that it may arrive here towards the end of the month; for very probably there will be a sailing for Montreal by the end of the month or on one of the first days of June. I shall have definite news to-morrow or day after, and meanwhile await my advices before shipping.”

On May 20, 1901, Debenham wrote to Oswald Roth:

“Confirming mine of the 17th inst. I take pleasure in advising you that the Steamer “Sadinian Prince” will sail on June 5, and I request you therefore to forward to me the lot of cheese to ‘Antwerp South Transit’ station to arrive not later than June 3.” (Exhibit 21.)

On May 24, 1901, Debenham wrote to Oswald Roth again:

“Please let me know by return mail if you will act on my letter of the 30th inst.”

At all the times specified in this statement of facts, there was in operation, and known to all the parties hereto, an International Treaty, entered into and binding upon various nations of Europe, including Switzerland, France, Germany and Belgium, pursuant to the provisions of which treaty shipments of merchandise intended for export beyond the territory of any of said nations could be transported through the territory of such nation “In Bond,” that is to say, shipments of such merchandise could, pursuant and subject to the provisions of said treaty, be transported into and beyond the territory of such nations without payment of any duty, provided that each of the said shipments of merchandise were con-

tained in receptacles that remained sealed, unbroken and in the uninterrupted, exclusive and [15] official custody of the Governmental customs authorities of the nation whose territory it was traversing, throughout its transportation through such territory, and during its continuance in such territory, and until its final deportation therefrom. But persons standing in a relationship to such shipments of merchandise, such as Debenham occupied to the shipment in controversy, had the right to direct such Governmental customs authorities when and where such shipments should be delivered for deportation.

On May 25, 1901, the shipment of merchandise (consisting of 35 tubs of cheese) which is involved in this action, and which was a shipment of merchandise intended to be forwarded, pursuant and subject to the provisions of the arrangements aforesaid and of the International Treaty herein specified, through territory belonging to the Republic of Switzerland, The Republic of France, The German Empire, and the Kingdom of Belgium, in Bond for export, from the port of Antwerp, to San Francisco, America, there to be delivered to plaintiff, was placed on board a local railroad train at Uster, Switzerland, consigned to the firm of Niebergall & Goth, forwarders, in Bale, Switzerland, the way-bill indicating that the shipment was sent in Bond in transit to the United States by way of Bale and Antwerp. The car containing the shipment arrived in Bale on May 28th, and the original car containing the shipment was forwarded by Niebergall & Goth on the same day by way of the Alsace-Lorraine Imperial Railway, and

the Belgian State Railway, to H. Debenham, Anvers-Bassins Station, Antwerp, said Debenham being, pursuant to the arrangements aforesaid, designated as the consignee of the shipment in the accompanying way-bill, covering transit from Bale to Antwerp.

The Alsace-Lorraine Imperial Railway took the car containing the goods as far as Sterpenich, a station on the Belgian frontier, where it was received by the Belgian State Railway, [16] about 5 P. M., May 29, 1901, and from there carried by the latter railway to Anvers-Bassin Station, at Antwerp, where it arrived May 30th, 1901. The Belgian State Railway was operated by the Government of the Kingdom of Belgium, and the same officials of the Government who operated the railroad, were also customs officers of the Government acting as such with respect to the freight which was transported by the said railroad, pursuant and subject to the provisions of the Treaty aforesaid. Upon the arrival of the car at Anvers-Bassin Station at Antwerp, as aforesaid, the station authorities notified Mr. Debenham of its arrival, and delivered to him the way-bill accompanying the shipment. According to the provisions of the Treaty aforesaid, and of the Laws of the Kingdom of Belgium, Mr. Debenham then had the option of directing the railroad customs officials to take the goods to the Belgium Governmental Customs Warehouse, called the Entrepot Royal, there to remain until such time as he should direct them to be taken to the ship which was to receive them, or of directing said officials to take the car containing the goods to the wharf at which the ship was to receive them, there to remain

until such time as he should direct the goods to be placed on board such ship. In either case, the goods were required to remain and would have remained during their entire transit, and their deposit and detention, whether in the Entrepot Royal or on the wharf, in the uninterrupted, exclusive official custody of the Government Customs authorities until actually loaded on board the ship.

As the ship on which the goods aforesaid were to be embarked for transportation out of the Kingdom of Belgium was not at the time of the arrival of said goods at Antwerp ready to receive the shipment, Mr. Debenham directed the railroad customs officials to take the goods to the Customs Warehouse at the Belgian Government at Antwerp, called the Entrepot Royal, there to be held in [17] the custody of the Belgian customs authorities until he notified the customs authorities that the vessel which was to receive the shipment was ready to receive and embark the shipment for export from Belgium, whereupon it would have been the duty of the Belgian customs authorities to transport the shipment from the Entrepot Royal, said Governmental customs warehouse, to the wharf and there deliver it physically to the ship which was to receive it and to make certain that the shipment was actually embarked on the vessel and carried out of the Kingdom of Belgium. Under the provisions of the International Treaty aforesaid, and of the laws of the Kingdom of Belgium, a shipment of merchandise like the one aforesaid, passing through Belgian territory in bond in transit merely, was required to remain uninterruptedly in the ex-

clusive, official custody, possession and control of the customs authorities of the Kingdom of Belgium (subject to the direction of persons standing in a relationship to such shipments such as Debenham occupied to the shipment in controversy, as to when and where such shipments should be delivered for deportation, as aforesaid), until the shipment was actually, physically delivered by such customs authorities, at the instance of the consignee of the shipment, on board the vessel which was to transport it beyond the Kingdom, unless the consignee of such shipment paid to the Belgian Government the charge and duties due on the shipment, and accepted actual physical delivery and possession thereof.

In pursuance of the directions of Mr. Debenham aforesaid, the car which contained the goods involved in the controversy in this action, shortly after its arrival at Antwerp, was taken by the Customs Authorities from the Anvers-Bassin Station to the Entrepôt Royal, where, on June 1, 1901, the goods were unloaded from the car and stored in the warehouse, under the exclusive custody and control of the Belgian Customs authorities. Upon receipt of the goods in the warehouse, the customs authorities delivered to [18] Debenham a document called "Acquit de Transit," which Debenham was to keep until the moment when the goods were to be removed from the warehouse to the steamer, and to deliver up to the customs authorities whenever, on his directions, the goods were to be embarked on board of the departing vessel.

Whenever the goods were to be thus removed, the

law required that Debenham should present this document called "Acquit de Transit" to the customs authorities, whereupon the latter authorities would issue a "remise au depart" (release for departure) and send the goods to the departing steamer, officers of the Customs remaining in custody thereof until the goods were actually and eventually loaded on board, and thereby passed out of the Kingdom. The warehouse charges were paid by Debenham. The transportation charges from the warehouse to the steamer would have been payable by Debenham, and would have been by him chargeable and collectible from Oswald Roth, the shipper aforesaid.

Mr. Debenham did secure a "remise au depart" for the goods involved in this action before they were destroyed in the Bonded Warehouse.

Mr. Debenham, as agent of the Canadian Pacific Railway Company, advertised in the "Lloyd Anverso," an Antwerp Daily paper, on May 22, 1901, that the steamer "Sardinian Prince" would be able to load for Montreal direct, and would sail on June 5, 1901.

The Steamer "Sardinian Prince" entered the port of Antwerp at noon, on Saturday, June 1, 1901, in ballast, was berthed at Quai Ledeganck, and began to load her cargo on Monday, June 3d, finished loading on June 7th, during the night, and left the port on June 8th.

On June 5th, 1901, at 2:36 P. M., a fire broke out in the Royal Warehouse, called the Entrepot Royal, as aforesaid, which [19] destroyed the building and contents, including the 35 tubs of cheese here in

suit. The fire which destroyed said cheese as aforesaid was not due to any fault or negligence of defendant.

The market value of the cheese at the time and place of its destruction, viz.: on June 5th, 1901, at Antwerp, Belgium, was the sum of 16,569.40 francs, and the value of such cheese at San Francisco, California, on the 1st day of August, 1901, the time when in due course it would have arrived there had it been shipped on the "Sardinian Prince" was the sum of \$6200.00.

ANDROS & HENGSTLER,
Attorneys for Plaintiff.

LINDLEY & EICKHOFF,
Attorneys for Defendant.

[Endorsed]: Filed Feb. 5, 1914. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [20]

*In the District Court of the United States, in and for
the Northern District of California, Second
Division.*

No. 13,240.

JOHN WIELAND, etc.,
WIELAND BROS., Inc.,

Plaintiff,

vs.

CANADIAN PACIFIC RAILWAY,
Defendant.

Stipulation for Submission of Cause on Briefs.

WHEREAS, there was heretofore filed in the above-entitled cause a stipulation submitting said

cause upon an agreed statement of facts, duly filed herein; and whereas a trial by jury was heretofore expressly waived; and whereas the above-entitled cause was heretofore set down for hearing on the 10th day of April, 1914; and whereas counsel for the respective parties hereto are desirous of submitting said cause upon said filed agreed statement of facts and without oral argument and upon briefs.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and between the parties hereunto that plaintiff may have to and including the 11th day of May, 1914, within which to file its opening brief, and that defendant may then have to and including the 22d day of June, 1914, within which to file its answering brief, and that plaintiff may then have to and including the 23d day of July, 1914, within which to file its reply brief, and that said cause shall be submitted to the above Honorable Court for its decision upon said briefs.

Dated: San Francisco, Cal., April 9, 1914.

ANDROS & HENGSTLER,

Attorneys for Plaintiff.

LINDLEY & EICKHOFF (per E. P.)

Attorneys for Defendant.

IT IS SO ORDERED.

WM. C. VAN FLEET,

Judge of said Court.

Dated: April 10th, 1914. [21]

[Endorsed]: Filed April 10, 1914. Walter B. Maling, Clerk. [22]

At a stated term, to wit, the March term, A. D. 1914, of the District Court of the United States of America, in and for the Northern District of California, Second Division, held at the courtroom in the City and County of San Francisco, on Friday, the 10th day of April, in the year of our Lord one thousand nine hundred and fourteen. Present: The Honorable WILLIAM C. VAN FLEET, District Judge.

No. 13,240.

JOHN WIELAND, Doing Business Under the Firm Name and Style of WIELAND BROS.,

vs.

CANADIAN PACIFIC RAILWAY CO.

Order Submitting Cause on the Agreed Statement of Facts, etc.

This cause came on regularly this day for trial before the Court sitting without a jury, a trial by jury having been expressly waived by stipulation filed; and upon motion of Golden W. Bell, Esq., attorney for plaintiff, and in accordance with a stipulation filed, it was ordered that this cause be and the same is hereby submitted on the agreed statement of facts heretofore filed and on briefs to be filed as follows: Plaintiff to have until May 11, 1914, defendant to have until June 22, 1914, and plaintiff to have until July 23, 1914, to reply. [23]

*In the District Court of the United States, in and for
the Northern District of California, Second
Division.*

No. 13,240.

JOHN WIELAND, Doing Business Under the
Firm Name and Style of "WIELAND
BROS.,"

Plaintiff,

vs.

CANADIAN PACIFIC RAILWAY COMPANY
(a Corporation),

Defendant.

Judgment.

This cause having come on regularly for trial upon the 10th day of April, 1914, before the Court sitting without a jury, a trial by jury having been specially waived by stipulation of the attorneys for the respective parties; upon motion of Golden W. Bell, Esq., attorney for plaintiff, the cause was submitted on an agreed statement of facts and stipulation, heretofore and on the said 10th day of April, 1914, filed and of record in this cause; and upon briefs to be filed; and the cause having been submitted to the Court for consideration and decision; and the Court, after due deliberation having ordered that judgment be entered in favor of plaintiff and against defendant in the sum of Six Thousand Two Hundred (\$6,200.00) Dollars, together with interest at 7% per annum from August 1, 1901, to December 14, 1914, and for costs.

Now, therefore, by virtue of the law and by reason

of the premises aforesaid, it is considered by the Court that John Wieland, doing business under the firm name and style of "Wieland Bros.," plaintiff, do have and recover of and from Canadian Pacific Railway Company, a corporation, defendant, the sum of Twelve Thousand, Two and 35/100 (\$12,-002.35) Dollars, together with his costs in this behalf expended taxed at \$216.68.

Judgment entered December 14, 1914.

WALTER B. MALING,
Clerk. [24]

*In the District Court of the United States, Northern
District of California, Second Division.*

Hon. WM. C. VAN FLEET, Judge.

JOHN WIELAND, etc.,

Plaintiff,

vs.

CANADIAN PACIFIC RAILWAY COMPANY,
a Corporation,

Defendant.

Monday, December 14, 1914.

Oral Opinion.

LOUIS T. HENGSTLER and GOLDEN W.
BELL, for Plaintiff.

LINDLEY & EICKHOFF, for Defendant.

THE COURT (Orally).—In this case the action is one to recover for the value of goods alleged to have been lost in transit by a common carrier. The case is submitted to the Court without the intervention of a jury upon an agreed statement of facts, and

the sole question upon which judgment turns is whether or no the goods had been completely delivered to the defendant at the time of their destruction, which occurred through the intervention of a fire while they were stored in the Government warehouse in the City of Antwerp in Belgium. The agreed statement of facts shows that for several years—for four or five years—the plaintiff had been shipping goods through the intervention of the defendant, the Canadian Pacific Railway Company, from points on the Continent of Europe, passing through the port of Antwerp, and that the goods in question were shipped to the defendant by parties in Switzerland, [25] and through Switzerland and Germany into Belgium to the port of Antwerp. They were shipped in bond under a treaty existing between the States of Switzerland, Germany, Belgium, and France, I think, providing for the carriage in bond through those countries of goods destined for a port in a country other than those covered by the treaty. In this case the goods were destined for the defendant in the United States. The treaty provided that the goods throughout their transportation on the Continent of Europe, and until their shipment on a vessel for transportation to another country should be in the charge of customs officers. Practically, the customs officers who have goods of that character in control and custody and who had the goods here involved, are the train officers, they acting as customs officers and their control over the goods being purely a qualified one for the purpose

of seeing that the goods are shipped out of the country in accordance with their claimed destination, and do not find their way in violation of the customs regulations of the different countries into the commerce of those countries. In this instance the goods were brought to Antwerp; they were consigned by the shipper in accordance with the usual method to the general continental agent of the defendant Canadian Pacific Railway, having an office at Antwerp. Upon their arrival at the City of Antwerp the way-bill or bill of lading, or whatever it is termed, was delivered by the customs authorities, the train officers, to the agent of the defendant. He accepted it. Under the treaty regulations and the law of Belgium there were two or three different methods for the handling of the goods at the port of Antwerp, which were within the direction and control of the consignee. He might have them taken directly on the cars, as these were, to the particular wharf where they were to be loaded on the vessel for transportation, or if desired by the consignee that they be detained [26] in Antwerp until the vessel could be ready, or for any other reason, he had the right to then direct that they be taken to the Government Warehouse for the purpose solely of awaiting their shipment upon the vessel that was to carry them. They were at all times, however, after their receipt in Antwerp, subject only to this qualified control of the customs authorities for the purpose of seeing that they were shipped out of the country, at the disposition and control of the consignee. He had the right to make the alternative directions

such as I have indicated. The consignee, the defendant's agent, in this instance, as I have indicated, directed that the goods be taken to the Government Warehouse and there kept until he should further direct their delivery to him for shipment. He subsequently did direct their shipment down to the wharf for the purpose of loading on the vessel, but before the shipment actually occurred, and on the same day or on the day subsequent to the order made by him, a fire occurred in the Government Warehouse and the goods were destroyed, and, as I suggested, the sole question in the case is whether under those circumstances, as a matter of law, the goods can be held as having been in the possession of the defendant so as to charge it as a common carrier rather than as a warehouseman, because its liabilities under the two alternative dispositions would be wholly different.

I am entirely satisfied, under the authorities, that the possession, so far as the consignor is concerned, had been completely delivered into the hands of the defendant. They were so delivered in accordance with the custom or method of trade at that port which had existed as between these same parties for a number of years. The consignor had completely surrendered the goods, so far as lay in his power, to the defendant. The defendant had accepted those goods for transportation, subject only to as I say, this qualified custody of the customs officers for the special and sole purpose of seeing that the customs laws of the country and provisions of [27] the treaty were not violated; and it seems to me

that there can be no question that under the law the liability of the defendant was complete as that of a common carrier. The goods having been consigned to it solely for the purpose of transportation and having been delivered to it at the City of Antwerp solely for that purpose, and having been directed by it to be stored in the warehouse temporarily only for its own convenience, they were in the possession of the defendant as a common carrier and not as a warehouseman, and it thereby became an insurer of their safety and is liable to the demand of the plaintiff for the value of the goods. Judgment will accordingly go in favor of the plaintiff as prayed.

I am satisfied, moreover, upon the incidental question as to the measure of damages, that the theory of the plaintiff is correct and that they are entitled to the value of the goods as of the date of delivery in this country, and not their value in Antwerp when destroyed.

[Endorsed]: Filed Dec. 14, 1914. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [28]

*In the District Court of the United States, for the
Northern District of California, Ninth Judicial
District, Department No. 2.*

No. 13,240.

JOHN WIELAND, Doing Business Under the
Firm Name and Style of "WIELAND
BROS.,"

Plaintiff,

vs.

CANADIAN PACIFIC RAILWAY COMPANY
(a Corporation),

Defendant.

Petition for Writ of Error.

The defendant in the above-entitled action, feeling itself aggrieved by the judgment entered on the 14th day of December, 1914, in said action, comes now by Lindley & Eickhoff, its attorneys, and petitions the above court for an order allowing said defendant to prosecute a Writ of Error to the Honorable, the United States Circuit Court of Appeals, for the Ninth Circuit, under and according to the laws of the United States in that behalf made and provided; and also that an order be made fixing the amount of security which the said defendant shall give and furnish upon said Writ of Error, and that upon the giving of such security all further proceedings in the above-entitled Court be suspended and stayed until the determination of said Writ of Error by the said United States Circuit Court of Appeals, for the Ninth Circuit.

And your petitioners will ever pray.

LINDLEY & EICKHOFF,
Attorneys for Defendant.

We hereby acknowledge service of the within petition for writ of error by receipt of copy this 18th day of January 1915.

ANDROS & HENGSTLER,
GOLDEN W. BELL,
Attorneys for Plaintiff. [29]

[Endorsed]: Filed Jan. 19, 1915. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [30]

*In the District Court of the United States, for the
Northern District of California, Ninth Judicial
District, Department No. 2.*

No. 13,240.

JOHN WIELAND, Doing Business Under the
Firm Name and Style of "WIELAND
BROS.,"

Plaintiff,

vs.

CANADIAN PACIFIC RAILWAY COMPANY
(a Corporation),

Defendant.

Assignment of Errors.

Comes now the defendant above-named, and assigns the following errors upon which it will rely upon the review on Writ of Error to the United States Circuit Court of Appeals (Ninth Circuit), of the judgment given by this Court in this cause:

The Court erred in deducing and determining from, and in deciding and adjudging upon the agreed statement of facts placed of record by the parties as aforesaid (the same being the agreed statement of facts mentioned and referred to in and by the judgment and opinion of the Court rendered in this case), the following as conclusions of law, viz.:

I.

That the goods which are involved in the controversy in this action had been completely delivered to and were in the possession of defendant as a common carrier at the time when they were destroyed by fire under the circumstances specified in the statement of facts aforesaid.

II.

The Court erred in failing to decide that the said goods at the time of their destruction by fire in the Royal Governmental [31] Warehouse of the Kingdom of Belgium, under the exclusive, actual, physical and official custody and control of the Governmental Customs Officers of said Kingdom, were in *custodia legis* and not in the possession of defendant.

III.

The Court erred in holding that although the goods were stored in the Royal Governmental Warehouse of the Kingdom of Belgium, under the circumstances specified in said agreement of facts, the defendant became an insurer of their safety, and liable to the demand of the plaintiff for the value of the goods, notwithstanding the fact that the fire which destroyed the goods was not due to any fault or negligence of defendant.

IV.

The Court erred in giving and entering judgment for the plaintiff in said action, and against said defendant.

V.

The Court erred in fixing the amount of the value of said goods as of the date of the delivery at San Francisco, and not as of the date of their destruction at the port of Antwerp.

Wherefore, defendant prays that the judgment of said Court be reversed.

LINDLEY & EICKHOFF,

Attorneys for Defendant.

We hereby acknowledge service of the within Assignment of Errors by receipt of copy this 18th day of January 1915.

ANDROS & HENGSTLER,

GOLDEN W. BELL,

Attorneys for Plaintiff.

[Endorsed]: Filed Jan. 19, 1915. W. B. Maling,
Clerk. By. J. A. Schaertzer, Deputy Clerk. [32]

*In the District Court of the United States, for the
Northern District of California, Ninth Judicial
District, Department No. 2.*

No. 13,240.

JOHN WIELAND, Doing Business Under the Firm
Name and Style of WIELAND BROS.,
Plaintiff,

vs.

CANADIAN PACIFIC RAILWAY COMPANY
(a Corporation),
Defendant.

Order Allowing Writ of Error.

Upon the motion of Lindley & Eickhoff, attorneys
for the defendant in the above-entitled action, and
upon filing a petition for Writ of Error, together
with an assignment of errors,

IT IS HEREBY ORDERED that a Writ of Er-
ror be, and is hereby allowed, to have reviewed in
the United States Circuit Court of Appeals, for the
Ninth Circuit, the judgment heretofore entered
herein, and that the amount of bond on said Writ of
Error be, and is hereby fixed at \$15,000.00, said bond
to operate as a cost and supersedeas bond.

Done in open court this 19th day of January, 1915.

WM. C. VAN FLEET,
District Judge.

[Endorsed]: Filed Jan. 19, 1915. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [33]

*In the District Court of the United States, for the
Northern District of California, Ninth Judicial
District, Department No. 2.*

No. 13,240.

JOHN WIELAND, Doing Business Under the Firm
Name and Style of WIELAND BROS.,
Plaintiff,

vs.

CANADIAN PACIFIC RAILWAY COMPANY
(a Corporation),

Defendant.

Bond.

KNOW ALL MEN BY THESE PRESENTS:
That we, viz., the corporation duly created, organized
and existing under and by virtue of the laws of the
Dominion of Canada, named Canadian Pacific Rail-
way Company, the defendant in the above-entitled
action, as principal, and the corporation duly created,
organized and existing under and by virtue of the
laws of the State of New York, named American
Surety Company of New York, as surety, are held
and firmly bound unto John Wieland (doing business
under the firm name and style of Wieland Bros.),
the plaintiff in the above-entitled action, in the full
and just sum of Fifteen Thousand (\$15,000.00) Dol-
lars, to be paid to the said John Wieland (doing busi-
ness under the firm name and style of Wieland
Bros.), said plaintiff, and his executors, administra-
tors and assigns, for which payment, well and truly
to be made, we bind ourselves, our heirs, executors,

administrators and successors, jointly and severally, firmly by these presents.

Sealed with our seals, and dated this 8th day of February, in the year of our Lord one thousand nine hundred and fifteen (1915).

The condition of the above obligation is THAT WHEREAS, lately at a session of the District Court of the United States, in and for the Northern District of California, Department 2 thereof, in an action pending in said Court between the said [34] John Wieland (doing business under the firm name and style of Wieland Bros.), plaintiff, and said corporation, Canadian Pacific Railway Company, defendant, a judgment was rendered and entered against the said Canadian Pacific Railway Company, said defendant; and

WHEREAS, the said defendant, Canadian Pacific Railway Company, has sued out a writ of error to the United States Circuit Court of Appeals, for the Ninth Circuit, to reverse the said judgment rendered by the said District Court in the above-entitled action;

NOW, THEREFORE, if the said Canadian Pacific Railway Company, the said defendant, shall prosecute said writ to effect, and shall answer all damages and costs that may be awarded against it if it fail to make good its plea then the above obligation is to be void; otherwise to remain in full force and effect; and

IT IS EXPRESSLY AGREED by said corporation, American Surety Company of New York, the surety hereto, that in case of breach of any condition

of this bond, the said District Court of the United States, for the Northern District of California, may, upon notice of not less than ten days to said surety, proceed summarily in the above-entitled action, to ascertain the amount which such surety is bound to pay on account of such breach, and render judgment therefor against defendant, and award execution therefor.

[Seal Canadian Pacific Railway.]

CANADIAN PACIFIC RAILWAY
COMPANY,

By E. M. BUIMICH (?),
Vice-President.

H. C. OSWALD (?),
Assistant Secretary.

AMERICAN SURETY COMPANY OF
NEW YORK,

By H. J. DOUGLAS,
Resident Vice-president.

[Seal American Surety Co.]

Attest: V. H. GALLAWAY,
Resident Assistant Secretary. [35]

The foregoing bond is hereby approved the 10th day of February, 1915.

WM. C. VAN FLEET,
District Judge.

[Endorsed]: Filed Feb. 10, 1915. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [36]

*In the District Court of the United States, in and for
the Northern District of California, Second Di-
vision.*

No. 13,240.

JOHN WIELAND, etc.,

Plaintiff,

vs.

CANADIAN PACIFIC RAILWAY COMPANY,
Defendant.

Praecipe for Transcript of Record.

To the Clerk of the Above-entitled Court:

Please make transcript of record in the above-entitled action, embodying therein especially the following papers:

Plaintiff's Complaint;

Answer of Defendant;

The Agreed Statement of Facts, together with the stipulation of the parties submitting the cause for decision upon the said agreed statement;

The stipulation waiving trial by jury;

The order of the Court of the 10th of April, 1914, submitting the cause upon the agreed statement of facts and briefs to be filed thereafter;

The judgment of the Court, and the opinion of the Judge in giving judgment for plaintiff;

The Petition for Writ of Error;

The Assignment of Errors;

The Order Allowing Writ of Error;

The Supersedeas Bond;

The Writ of Error, and the Citation issued thereon.

Dated San Francisco, Feb. 11th, 1915.

LINDLEY & EICKHOFF,

Attorneys for Defendant (per E. P.).

[Endorsed]: Filed Feb. 11, 1915. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [37]

[Certificate of Clerk U. S. District Court to
Transcript of Record.]

*In the District Court of the United States, in and
for the Northern District of California, Second
Division.*

No. 13,240.

JOHN WIELAND, Doing Business Under the Firm
Name and Style of WIELAND BROS.,
Plaintiff,

vs.

CANADIAN PACIFIC RAILWAY COMPANY
(a Corporation),

Defendant.

CLERK'S CERTIFICATE TO RECORD ON
APPEAL ON WRIT OF ERROR.

I, Walter B. Maling, Clerk of the District Court of
the United States, for the Northern District of Cali-
fornia, do hereby certify the foregoing thirty-seven
(37) pages, numbered from 1 to 37, inclusive, to be
a full, true and correct copy of the complaint; an-
swer of defendant; stipulation submitting cause
upon agreed statement of facts; statement of facts;

stipulation for submission of cause on briefs; order submitting cause on the agreed statements of facts, etc.; judgment; oral opinion; petition for writ of error; assignment of errors; order allowing writ of error; bond and praecipe in the above-entitled cause, as the same remains of record and on file in the office of the clerk of said court, and that the same constitute the return to the annexed writ of error.

I further certify that the cost of the foregoing return to writ of error is \$21.20; that said amount was paid by the attorneys for the defendant, and that the original writ of error and citation issued in said cause are hereto annexed.

In testimony whereof, I have hereunto set my hand and affixed the seal of said District Court, this 10th day of March, A. D. 1915.

[Seal] WALTER B. MALING,
Clerk U. S. District Court, Northern District of
California.

[Internal Revenue Stamp. Canceled March 10,
1915. W. B. M.] [38]

[Writ of Error (Original).]

UNITED STATES OF AMERICA,—ss.

The President of the United States of America, to
the Honorable, the Judges of the District Court
of the United States for the Northern District
of California, Second Division, Greeting:

Because, in the record and proceedings, as also in
the rendition of the judgment of a plea which is in
the said District Court, before you, or some of you,

between Canadian Pacific Railway Company, a Corporation, plaintiff in error, and John Wieland, doing business under the firm name and style of Wieland Bros., defendant in error, a manifest error hath happened, to the great damage of the said Canadian Pacific Railway Company, a corporation, plaintiff in error, as by its complaint appears:

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the City of San Francisco, in the State of California, within thirty days from the date hereof, in the said Circuit Court of Appeals, to be then and there held, that, the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable EDWARD DOUGLAS WHITE, Chief Justice of the United States, the 10th day of February, in the year of our Lord one

thousand nine hundred and fifteen.

WALTER B. MALING,
Clerk of the United States District Court, Northern
District of California.

By J. A. Schaertzer,
Deputy Clerk.

Allowed by:

WM. C. VAN FLEET,
District Judge.

Due service of the within Writ of Error is hereby
admitted by receipt of copy this 11th day of February,
1915.

ANDROS & HENGSTLER,
GOLDEN W. BELL,
Attorneys for Defendant in Error.

The answer of the Judges of the District Court of
the United States, in and for the Northern District
of California.

The record and all proceedings of the plaint
whereof mention is within made, with all things
touching the same, we certify under the seal of our
said Court, to the United States Circuit Court of
Appeals for the Ninth Circuit, within mentioned at
the day and place within contained, in a certain
schedule to this writ annexed as within we are com-
manded.

By the Court.

WALTER B. MALING,
Clerk.

[Endorsed]: No. 13,240. United States District
Court for the Northern District of California, Sec-
ond Division. Canadian Pacific Railway Company

(a Corporation), Plaintiff in Error, vs. John Wieland, Doing Business Under the Firm Name and Style of Wieland Bros., Defendant in Error. Writ of Error. Filed Feb. 11, 1915. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

[Citation on Writ of Error (Original).]

UNITED STATES OF AMERICA,—ss.

The President of the United States, to John Wieland, Doing Business Under the Firm Name and Style of Wieland Bros., and to Andros & Hengstler, His Attorneys, Greeting:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the City of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to a writ of error duly issued and now on file in the Clerk's Office of the United States District Court for the Northern District of California, Second Division, wherein Canadian Pacific Railway Company, a Corporation, is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable WILLIAM C. VAN FLEET, United States District Judge for the North-

ern District of California, this 10th day of February,
A. D. 1915.

WM. C. VAN FLEET,
United States District Judge.

Due service of the within Citation on Writ of Error
is hereby admitted by receipt of copy this 11th day
of February, 1915.

ANDROS & HENGSTLER,
GOLDEN W. BELL,
Attorneys for Defendant in Error.

[Endorsed]: No. 13,240. United States District
Court for the Northern District of California, Sec-
ond Division. Canadian Pacific Railway Company
(a Corporation), Plaintiff in Error, vs. John Wie-
land, Doing Business Under the Firm Name and
Style of Wieland Bros., Defendant in Error. Cita-
tion on Writ of Error. Filed Feb. 11, 1915. W. B.
Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

[Endorsed]: No. 2582. United States Circuit
Court of Appeals for the Ninth Circuit. Canadian
Pacific Railway Company, a Corporation, Plaintiff
in Error, vs. John Wieland, Doing Business Under
the Firm Name and Style of Wieland Bros., Defend-
ant in Error. Transcript of Record. Upon Writ
of Error to the United States District Court of the
Northern District of California, Second Division.

Filed March 10, 1915.

FRANK D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Meredith Sawyer,
Deputy Clerk.

*In the District Court of the United States, in and
for the Northern District of California, Second
Division.*

No. 13,240.

JOHN WIELAND, Doing Business Under the Firm
Name and Style of WIELAND BROS.,
Plaintiff,

vs.

CANADIAN PACIFIC RAILWAY COMPANY
(a Corporation),
Defendant.

Stipulation and Order Substituting Party.

WHEREAS, subsequent to the beginning of the
above-entitled action, the plaintiff, John Wieland,
died; and whereas, the successors of said deceased
thereafter incorporated under the name of Wieland
Bros., Inc.; and whereas said corporation, Wieland
Bros., Inc., is now the real party plaintiff in interest
herein;

NOW, THEREFORE, IT IS HEREBY STIPU-
LATED AND AGREED that said Wieland Bros.,
Inc., a corporation, may be, and it is hereby, substi-
tuted herein as the plaintiff, and that any recovery
which may be had herein from the defendant, Canad-
ian Pacific Railway Company, a corporation, may be
paid to said Wieland Bros., Inc., a corporation.

ANDROS & HENGSTLER,
Attorneys for Plaintiff.

LINDLEY & EICKHOFF,
Attorneys for Defendant.

So ordered this 5th day of February, 1914.

WM. C. VAN FLEET,
Judge of said Court.

[Endorsed]: Filed Feb. 6, 1914. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

No. 13,240.

JOHN WIELAND, etc.

vs.

CANADIAN PACIFIC RY. CO., a Corp.

**Certificate of Clerk U. S. District Court to Copy of
Stipulation and Order Substituting Party.**

United States of America,
Northern District of California,
City and County of San Francisco,—ss.

I, Walter B. Maling, Clerk of the District Court of the United States of America, in and for the Northern District of California, do hereby certify the foregoing to be a full, true and correct copy of the original Stipulation and Order Substituting Party, signed and filed February 6, 1914, in the above-entitled cause, as the same remains of record and on file in the office of the clerk of said court.

In witness whereof, I have hereunto set my hand and affixed the seal of said District Court this 16th day of March, A. D. 1915.

[Seal]

WALTER B. MALING,
Clerk of the United States District Court, Northern
District of California.

By J. A. Schaertzer,
Deputy Clerk.

[Internal Revenue Stamp. Canceled March 16, 1915. J. A. S.]

[Endorsed]: No. 2582. United States Circuit Court of Appeals for the Ninth Circuit. Filed Mar. 16, 1915. F. D. Monckton, Clerk.

